

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of	
Inventors: Marianne HICKEY et al.	: Confirmation No. 7400
	:
U.S. Patent Application No. 09/994,915	: Group Art Unit: 2142
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For: ENHANCEMENT OF COMMUNICATION CAPABILITIES	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attn: BOARD OF PATENT APPEALS AND INTERFERENCES

BRIEF ON APPEAL

Further to the Notice of Appeal filed October 23, 2006, in connection with the above-identified application on appeal, herewith is Appellant's Brief on Appeal. The \$500 statutory fee for the Appeal Brief was paid on May 23, 2006.

To the extent necessary, Appellant hereby requests any required extension of time under 37 C.F.R. §1.136 and hereby authorizes the Commissioner to charge any required fees not otherwise provided for to Deposit Account No. 08-2025.

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I. Real Party in Interest

The real party in interest is Hewlett Packard Development Company, L.P., a Texas limited partnership.

II. Related Appeals and Interferences

There are no related appeals and/or interferences.

III. Status of Claims

No claims are allowed.

Claims 1-15 and 17 are rejected under 35 U.S.C. 102(3) as being anticipated by Khan et al., U.S. Patent Publication 2002-0165988 A1. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Khan et al., U.S. Patent Publication 002-0165988 A1, in view of Sravanapudi et al., U.S. Patent Publication 2001-0049603 A1.

IV. Status of Amendments

There are no outstanding unentered amendments.

V. Summary of Claimed Subject Matter

The present invention relates to a method of enhancing communication between a user using a first device and a content server with which the user is interacting through an interfacing handler, i.e., a multimodal browser. Instant specification at FIG. 7 and page 1, lines 5-7. The user, using the first device, passes on session joining information to a second device and the second device uses the joining information to join the session. Instant specification at FIG. 7 and page 9, lines 7-16 and page 12, line 22-page 13, line 2. The multimodal browser then distributes content, which may include content references, from the content server to the devices in the session for output to the user. Instant specification at FIG. 7 and page 13, line 13 - page 14, line 8.

In accordance with a method embodiment of the present invention, the method enhances communication between a user using a first device and a content server with which the user is interacting through an interfacing handler. Instant specification at page 11, lines 22 31. The method comprises the communication between the first device and interfacing handler being managed as a session having one or more participants. Instant specification at page 12, lines 10-27 ("The service system includes a session manager 71 which whenever a subscriber logs on their voice browser service, generates a new session object instant 100 for the communication session with the user." and "The user therefore instructs a nearby video output device (peripheral 75) to join the user's current session with the service system."). The user, by way of the first device being connected to the session, is an initial participant to the

session. Instant specification at page 12, line 14 ("Initially, the sole participant is the subscriber (user5).").

According to the method, the user, using the first device, instructs an output device to join the session by way of session-joining information being passed from the first device to the output device. Instant specification at FIG. 7 and page 12, line 22 - page 13, line 11 ("The user therefore instructs a nearby video output device (peripheral 75) to join the user's current session with the service system. This is achieved by the sending of joining information over a short-range communication link 82 from the device 40 to the device 75. This short-range link can be, for example, a Bluetooth radio link or an infrared link with the devices 40 and 75 having transmitter 76 and receiver 77 respectively. The joining information comprises an address (e.g. URL) of an 'assist' interface 73 of the service system and session-identifying information.").

The output device joins the session as a participant using the session-joining information. Instant specification at page 14, lines 4-11 ("A communications subsystem 78 of the peripheral device 75 uses the joining information to connect with the assist interface 73 of the service system 70.").

Further, the interfacing handler sends content and/or content references from the content server to the participants in the session and the output device outputs for the user at least some of the content from the interfacing handler. Instant specification at page 13, lines 16-28 ("The browser can interact with the device in several ways. . . . the browser can send messages for display . . . can receive a video file and interpret it

for sending on to the device 75 for display . . . can simply pass the device all references to video files.”).

These advantages are achieved by the present invention as recited in the method of independent claim 1 which provides: “A method of enhancing communication between a user using a first device and a content server with which the user is interacting through an interfacing handler, wherein: the communication is managed as a session having one or more participants, the user, via the first device, being an initial participant to the session; the user, using the first device, instructs an output device to join the session, session-joining information being passed from the first device to the output device; the output device uses the session-joining information to join the session as a participant; and the interfacing handler sends content and/or content references from the content server to the participants in the session, the output device outputting for the user at least some of the content.”

In accordance with a voice browser service system embodiment of the present invention, the service system provides voice-form content to a user device. The service system comprises a session manager operative to set up a communication session with the user device as an initial member and to pass the user device a session identifier for the session. Instant specification at page 12, lines 10-27 (“The service system includes a session manager 71 which whenever a subscriber logs on their voice browser service, generates a new session object instant 100 for the communication session with the user.”, “The user therefore instructs a nearby video output device (peripheral 75) to join the user’s current session with the service system.”, and “Initially, the sole participant is the subscriber (user5).”).

The service system further comprises means for retrieving content from a content server and delivering at least some of the content as voice signals to the user device. Instant specification at FIG. 7 (voice browser 3) and page 11, lines 23-31 ("The user is interfacing with the content server 4 through a voice browser 3 that is hosted in a browser service system 70 connected to the communications infrastructure The content server 4 thus exchanges content data with the browser 3 (see arrow 81) and the user exchanges voice data with the browser 3 (see arrow 80).") and page 14, lines 16-30.

The service system further comprises receiving means for receiving a joining request including a session identifier and capability information concerning what types of content the output device can handle, from an output device. Instant specification at FIG. 7 (interface 72 and/or assist interface 73) and page 13, lines 4-11 and page 14, lines 10-14. The receiving means is configured to pass the request to the session manager, and the session manager, in response to the request to join the output device to the communication session, is configured to register the output device's capability information. Instant specification at page 13, lines 4-11 and page 14, lines 10-30.

The service system further comprises means for sending elements of the content retrieved from the content server to the output device while joined to the communication session. The elements sent to the output device are of a type which, according to the output device's registered capability information, the output device can handle. Instant specification at FIG. 7 (browser 3) and page 13, lines 25-28, and page 14, lines 16-26.

These advantages are achieved by the present invention as recited in the apparatus of independent claim 16 which provides: "A voice browser service system for providing voice-form content to a user device, the service system comprising: a session manager operative to set up a communication session with the user device as an initial member, and to pass the user device a session identifier for the session; means for retrieving content from a content server and delivering at least some of that content as voice signals to the user device; receiving means for receiving, from an output device, a joining request including said session identifier and capability information concerning what types of content the output device can handle, the receiving means being operative to pass the request to the session manager, and the session manager being responsive to the request to join the output device to the communication session and register its capability information; and means for sending to the output device, whilst joined to the communication session, elements of the said content retrieved from the content server that are of a type which, according to the device's registered capability information, the output device can handle."

In accordance with a user communication device embodiment of the present invention, the communication device comprises a processor and a transmitter connected to be responsive to the processor. Instant specification at FIG. 7 (mobile entity 40 and transmitter 76).

The processor sets up a communication session with an interfacing handler through which the user device is able to receive content from a content server. Instant specification at page 12, line 10 - page 13, line 2. The processor further assembles session joining data for enabling an output device to join the communication session

by the device passing the session joining data to the interfacing handler. Instant specification at page 12, line 10 - page 13, line 2.

The transmitter is configured to send the session joining information to the output device independently of the interfacing handler. Instant specification at page 12, line 24 - page 13, line 2.

These advantages are achieved by the present invention as recited in the apparatus of independent claim 17 which provides: "A user communication device comprising: a processor for (a) setting up a communications session with an interfacing handler through which the user device can receive content from a content server and (b) assembling session joining data for enabling an output device to join the communication session by that device passing the session joining data to the interfacing handler; and a transmitter connected to be responsive to the processor for sending the session joining information to the output device independently of the interfacing handler.

VI. Grounds of Rejection to be Reviewed on Appeal

A. Whether claims 1-17 are unpatentable under 35 U.S.C. 101.

B. Whether claims 1-17 are unpatentable under 35 U.S.C. 112, first paragraph, for containing subject matter not described in the specification.

C. Whether claims 1-17 are unpatentable under 35 U.S.C. 112, second paragraph, for being indefinite.

D. Whether claims 1-15 and 17 are unpatentable under 35 U.S.C. 102(e) in view of Khan et al.

E. Whether claim 16 is unpatentable under 35 U.S.C. 103(a) in view of Sravanapudi.

VII. Argument

A. Claims 1-17 are patentable under 35 U.S.C. 101

The rejection of claims 1-17 under 35 U.S.C. §101 as not being supported by a specific and substantial asserted utility or a well established utility is unfounded and should be reversed. The statute states, in relevant part, “[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor . . .” See 35 U.S.C. §101. A “process” is defined to encompass “[a] process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.” See 35 U.S.C. § 100(b).

Claims 1-10 of the present application are directed to “a method of enhancing communication,” as recited in independent claim 1. Appellants respectfully submit that each of claims 1-10 is directed to a method, which is included in the statutory definition of a “process,” and is therefore expressly included in one of the categories of statutory subject matter provided in 35 U.S.C. §101. Claims 11-17 of the present application are, respectively, directed to “a user communication device,” “a peripheral device,” “a voice browser service system,” and “a user communication device.” Appellants respectfully submit that each of claims 11-17 is directed to an apparatus, which is included in the statutory definition of either a “machine” or “manufacture,” and is therefore expressly included in one of the categories of statutory subject matter provided in 35 U.S.C. §101.

Furthermore, the Appellants submit that the subject matter claimed in claims 46-50 and 68-72 does not fall within the judicially defined exceptions to patentable subject matter, i.e., laws of nature, natural phenomena, or abstract ideas. *Diamond v. Diehr*, 450 U.S. 175, 185 (1981).

The PTO bears the initial burden of establishing and setting forth a prima facie case of lack of utility and providing sufficient evidentiary basis for factual assumptions relied upon in establishing the prima facie showing. See MPEP §2107.02 IV. Further specifically, the PTO has failed to set forth:

- (A) an explanation clearly setting forth the reasoning used in concluding that the asserted utility is neither both specific and substantial nor well-established;
- (B) support for factual findings relied upon in reaching the conclusion; and
- (C) an evaluation of all relevant evidence of record, including utilities taught in the closest prior art.

For at least this reason, reversal of the rejection is respectfully requested.

Appellant directs the PTO's attention to at least the Summary of Claimed Subject Matter at pages 6-11 of the Appeal Brief submitted on May 23, 2006, and still more specifically, the instant specification at FIG. 7 and page 1, lines 5-7 as providing a reasonable identification of an interfacing handler. For at least this reason, withdrawal of the rejection is respectfully requested.

Further still, claim 16 does not appear to recite the term "interface handler" and therefore the PTO's assertions are inapplicable to at least this claim and should be reversed.

Based on each of the foregoing reasons, the rejection of claims 1-17 under §101 is incorrect and should be reversed.

B. Claims 1-17 contain subject matter described in the specification

The rejection of claims 1 and 18 under 35 U. S C 112, first paragraph, as containing subject matter not described in the specification is hereby traversed. Based on the description found at at least page 1, lines 5-7, and FIG. 7, it is believed that the subject matter was described in the specification in a way to reasonably convey to persons skilled in the art that the inventors had possession of the claim invention. For at least this reason, the rejection should be reversed.

Further, the PTO has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in appellant's disclosure a description of the invention defined by the claims. The PTO has failed to meet this burden. The PTO has failed to provide reasons why persons skilled in the art would not have recognized that the inventor was in possession of the invention as claimed in view of the above noted disclosure. It is believed that one skilled in the art would understand the term interfacing handler based on the disclosure in the specification.

Further still, it is believed that the disclosure reasonably conveys to a person of ordinary skill in the art that the inventor had possession at the time of filing of the claimed subject matter. There is a strong presumption that an adequate written description of the claimed invention is present when the application is filed. *In re Wertheim*, 541 F.2d 257, 263, 191 USPQ 90, 97 (CCPA 1976) ("we are of the opinion that the PTO has the initial burden of presenting evidence or reasons why persons skilled in the art would not recognize in the disclosure a description of the invention

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defined by the claims"). For each of the above reasons, the rejection of claims 1-17 should be reversed.

C. Claims 1-17 are not indefinite

The rejection of claims 1-17 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which appellant regards as the invention is hereby traversed. Compliance with 35 U.S.C. §112, second paragraph, involves a determination of whether the claim apprises one of ordinary skill in the art of the claim scope, i.e., whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. In the present claims (specifically, claims 1, 11, 14, and 17), the interfacing handler is positively recited and is believed to be set out and circumscribed with a reasonable degree of clarity and particularity, e.g., the claim language corresponds to particular language of the instant specification, as stated above, such as page 1, lines 5-7 and the description at pages 12 and 13 of the instant specification. Thus, the meaning of the claim term is believed to be apparent from the specification. For at least this reason, reversal of the rejection is respectfully requested.

Further, the PTO's erroneous assertion that "the 'interface handler' is not defined in [sic] specification" notwithstanding, a claim term that is not used or defined in the specification is not indefinite if the meaning of the claim term is discernible. *Bancorp Services, L.L.C. v. Hartford Life Ins. Co.*, 359 F.3d 1367, 1372, 69 USPQ2d 1996, 1999-2000 (Fed. Cir. 2004). Thus, even assuming *arguendo* that the claim term was not specifically defined in the specification, Appellants believe that a person of ordinary skill in the art could interpret the mete and bounds of the claim language. For at least this additional reason, reversal of the rejection is respectfully requested.

Further still, and as stated above, claim 16 does not appear to recite the term "interface handler" and the PTO's assertions are inapplicable to at least this claim and should be reversed.

Further still, the recitation of "a first device without second device" at the top of page 3 of the instant Official Action is not understood as there is no explanation attached or related thereto. Appellants fail to understand whether this is intended to form a part of the 112, second paragraph, rejection related to the interface handler or is a separate rejection. For at least this reason, reversal of the rejection is respectfully requested.

Based on each of the foregoing, reversal of the rejection of claims 1-17 is respectfully requested.

D. Claims 1-15 and 17 are patentable over Khan et al. (U.S. Published Patent Application 2002/0165988)

The rejection of claims 1-15 and 17 under 35 U.S.C. 102(e) as being anticipated by *Khan* is hereby traversed because *Khan* does not appear to be a valid 102 reference. Specifically, *Khan* has a filing date of June 6, 2002 and is a continuation-in-part of application 09/595,781, filed on June 16, 2000, now Patent 6,438,575 (hereafter referred to as *Khan* '575). Specifically, portions of *Khan* relied upon by the PTO do not appear to find support in *Khan* '575 and therefore do not constitute valid prior art applicable to the instant application having an effective filing date of November 29, 2000. A rejection based on 35 U.S.C. §102 requires every element of the claim to be included in the reference, either directly or inherently. That is, the PTO asserted paragraph 251 ("VoiceXML browser") of *Khan* is nowhere to be found in *Khan* '575 and therefore appears to be entitled to only the June 6, 2002 filing date. Based on this fact, the PTO has failed to identify a disclosure or suggestion of all the claimed limitations in *Khan*. For at least this reason, reversal of the rejection is respectfully requested.

Further, *Khan* fails to disclose or suggest the managing the communication as a session having one or more participants as claimed in the present claimed subject matter. The PTO asserts that paragraph 60 describes the use of a session; however, this is incorrect because the identified portion of *Khan* appears to describe the use of class libraries and fails to disclose managing communication as a session. Specifically, paragraph 60 recites the terms "collaborating classes;" however, *Khan* fails to disclose or suggest the use of sessions as the communication mechanism for

the 'collaborating classes.' For at least this reason, reversal of the rejection is respectfully requested.

In order to rely upon a theory of inherency, the PTO is required to provide a factual basis and/or technical reasoning reasonably supporting the determination that the allegedly inherent characteristic **necessarily** flows from the prior art teaching. See *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). "The mere fact that a certain thing **may** result from a given set of circumstances **is not sufficient.**" *In re Robertson*, 169 F.3d 743, 745, 49 USPQ3d 1949, 1950-51 (Fed. Cir. 1999) (emphasis added). "A claim limitation is inherent in the prior art if it is necessarily present in the prior art, not merely probably or possibly present." *Rosco v. Mirror Lite*, 304 F.3d 1373, 1380 (Fed. Cir. 2002). The PTO has failed to support the inherency assertion regarding the communication being managed as a session and for at least this additional reason, reversal of the rejection is respectfully requested.

Further still, *Khan* fails to disclose or suggest the user, using the first device instructs an output device to join the session, session-joining information being passed from the first device to the output device as claimed in the present claimed subject matter. The PTO asserts that paragraph 96 describes the user instructing the output device to join the session and session-joining information being passed from the first device to the output device. This is incorrect for at least two reasons.

First, as described above, *Khan* fails to disclose or suggest the use of a session. For at least this reason, reversal of the rejection is respectfully requested.

Second, the identified portion of *Khan* fails to disclose or suggest the user using the first device to instruct an output device to join a session. The peripheral device of *Khan* is being used by the user; however, the user fails to instruct, using the peripheral device, the output device to join a session. Rather, the peripheral device connects to the output device via a wireless transceiver 310 which is a part of the host computer system. That is, *Khan* fails to disclose or suggest the user using the peripheral device (wireless device) to instruct the host computer system to join a session. For at least this reason, reversal of the rejection is respectfully requested.

Third, *Khan* fails to disclose the passing of session-joining information from the first device to the output device in paragraph 96. The PTO's reference to the peripheral adapter recited in paragraph 96 is not understood as *Khan* fails to disclose the passing of session-joining information via the peripheral adapter. For at least this reason, reversal of the rejection is respectfully requested.

Based on each of the foregoing reasons, claim 1 is patentable over *Khan* and reversal of the rejections based thereon is respectfully requested.

Claims 2-10 depend, either directly or indirectly, from claim 1, include further limitations, and are patentable over *Khan* for at least the reasons advanced above with respect to claim 1. The rejection of claims 2-10 should be reversed.

Claim 11 is patentable over *Khan* for at least reasons similar to those advanced above with respect to claim 1 and the rejection of claim 11 should be reversed.

Claims 12-13 depend, either directly or indirectly, from claim 11, include further limitations, and are patentable over *Khan* for at least the reasons advanced above with respect to claim 11. The rejection of claims 12-13 should be reversed.

Claim 14 is patentable over *Khan* for at least reasons similar to those advanced above with respect to claim 1 and the rejection of claim 14 should be reversed.

Claim 15 depends from claim 14, includes further limitations, and is patentable over *Khan* for at least the reasons advanced above with respect to claim 14. The rejection of claim 15 should be reversed.

Claim 17 is patentable over *Khan* for at least reasons similar to those advanced above with respect to claim 1 and the rejection of claim 17 should be reversed.

E. Claim 16 is patentable over *Khan* in view of *Sravanapudi* et al. (U.S. Patent Application Publication 2001/0049603)

The rejection of claim 16 under 35 U.S.C. 103(a) as being unpatentable over *Khan* in view of *Sravanapudi* is hereby traversed for at least reasons similar to the reasons advanced above with respect to claim 1. *Sravanapudi* fails to cure the above-noted defects of *Khan* and reversal of the rejection is in order.

VIII. Conclusion

For each of the foregoing reasons, reversal of the rejections is in order.

Respectfully submitted,

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RAN:tal

IX. Claims Appendix

1. A method of enhancing communication between a user using a first device and a content server with which the user is interacting through an interfacing handler, wherein:

the communication is managed as a session having one or more participants, the user, via the first device, being an initial participant to the session;

the user, using the first device, instructs an output device to join the session, session-joining information being passed from the first device to the output device;

the output device uses the session-joining information to join the session as a participant; and

the interfacing handler sends content and/or content references from the content server to the participants in the session, the output device outputting for the user at least some of the content.

2. A method according to claim 1, wherein the devices register their communication capabilities with the session and the interfacing handler sends content and/or content references from the content server to the devices taking account of their registered capabilities.

3. A method according to claim 1, wherein the interfacing handler sends content from the content server to the output device according to authorisation information specified by the user.

4. A method according to claim 1, wherein the content server provides content in multiple media types and the output device is capable of handling one or more media types not handled by the first device.

5. A method according to claim 1, wherein the interfacing handler is a browser arranged to interpret pages with markup tags provided by the content server.

6. A method according to claim 5, wherein the first device is a voice communication device and the interfacing handler is a multimodal browser capable of handling voice markup pages provided by the content server.

7. A method according to claim 6, wherein the first device is a cellular phone.

8. A method according to claim 1, wherein the first device passes on the session-joining information using a short-range communication link.

9. A method according to claim 1, wherein the output device is named upon session-joining with a name that is known to both the user and the interfacing handler.

10. A method according to claim 1, wherein the user can communicate with the output device via the first device and the interfacing handler.

11. A user communication device comprising:

means for setting up a communications session with an interfacing handler through which the user device can receive content from a content server;

means for assembling session-joining data for enabling an output device to join the communication session by that device passing the session-joining data to the interfacing handler; and

means for sending the session-joining information to the output device independently of the interfacing handler.

12. A device according to claim **11**, wherein said means for sending the session-joining information is a short-range communication subsystem.

13. A device according to claim **11**, wherein said means for assembling session-joining data comprises means for receiving a session identifier from the interfacing handler.

14. A peripheral device comprising:

peripheral functionality;

a short-range communications subsystem for receiving session-joining data over a short-range communications link; and

a communications subsystem for sending the session-joining information to an interfacing handler to join an existing communication session and to receive content for output via the peripheral functionality of the device.

15. A peripheral device according to claim **14**, wherein the communications subsystem is operative to send along with said session-joining information, data on the types of content that the peripheral device can handle.

16. A voice browser service system for providing voice-form content to a user device, the service system comprising:

a session manager operative to set up a communication session with the user device as an initial member, and to pass the user device a session identifier for the session;

means for retrieving content from a content server and delivering at least some of that content as voice signals to the user device;

receiving means for receiving, from an output device, a joining request including said session identifier and capability information concerning what types of content the output device can handle, the receiving means being operative to pass the request to the session manager, and the session manager being responsive to the request to join the output device to the communication session and register its capability information; and

means for sending to the output device, whilst joined to the communication session, elements of the said content retrieved from the content server that are of a type which, according to the device's registered capability information, the output device can handle.

17. A user communication device comprising:

a processor for (a) setting up a communications session with an interfacing handler through which the user device can receive content from a content server and (b) assembling session joining data for enabling an output device to join the communication session by that device passing the session joining data to the interfacing handler; and

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a transmitter connected to be responsive to the processor for sending the session joining information to the output device independently of the interfacing handler.

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X. Evidence Appendix

None.

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XI. Related Proceedings Appendix

None.